163 US 680

163-680

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. ~~606~~. 299

THE UNITED STATES, APPELLANT,

vs.

CERTAIN REAL ESTATE KNOWN AS THE GARDO HOUSE AND GROUNDS, ETC., WILLIAM B. PRESTON, ET AL.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF UTAH.

FILED DECEMBER 4, 1893.

(15458.)

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THE UNITED STATES, APPELLANT,

vs.

CERTAIN REAL ESTATE KNOWN AS THE GARDO HOUSE AND GROUNDS, ETC., WILLIAM B. PRESTON, ET AL.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF UTAH.

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a IN THE THIRD JUDICIAL DISTRICT COURT OF THE TERRITORY OF UTAH.

THE UNITED STATES OF AMERICA, PLAINTIFF and respondent,
vs.
CERTAIN REAL ESTATE SITUATED IN THE CITY and county of Salt Lake, Territory of Utah, * * * known as the Gardo House and grounds, and Historian's Office and grounds, and William B. Preston, Robert T. Burton, and John R. Winder, trustees, defendants and appellants.
No. 315.

Transcript.

Endorsed: Filed and transmitted Sept. 23rd, 1892. Henry G. McMillan, clerk, by Geo. D. Loomis, depty.

Filed in the supreme court Sep. 23, 1892, at Salt Lake City, Utah. Jos. P. Bache, clerk.

1 IN THE THIRD JUDICIAL DISTRICT COURT OF THE TERRITORY OF UTAH.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
CERTAIN REAL ESTATE SITUATED IN THE CITY and county of Salt Lake, Territory of Utah, particularly described as follows: All of the east half of lot six, in block 75, Plat A, Salt Lake City survey, to wit: Commencing at the northeast corner of said lot, thence south 10 rods, thence west 10 rods, thence north 10 rods, thence east 10 rods to the place of beginning, known as the Gardo House and grounds. Also part of the west half of lot 6, block 75, Plat A, Salt Lake City survey, Salt Lake County, to wit: Commencing at a point 10 rods west of the northeast corner of said lot 6, and running thence south 10 rods, thence west 7 rod, thence north 10 rods, thence east 7 rods to the place of beginning, known as the Historian's Office and grounds, and William B. Preston, Robert T. Burton, and John R. Winder, trustees, defendants.

On this 5th day of November, A. D. 1890, comes W. H. H. Miller, Attorney-General of the United States, and with him Charles S. Varian, attorney for the United States for the Territory of Utah, to prosecute a

civil action in which the United States are concerned, and informs the court—

That the United States of America brings suit to escheat certain real property in the title hereun, and hereinafter particularly described, and against the defendants above named as trustees, and in this behalf complain, for that—

1st. That on the 19th day of January, A. D. 1855, by an act of the Territorial assembly of the Territory of Utah, the Church of Jesus Christ of Latter-day Saints became an incorporated body for religious and
2 charitable purposes, and from said date continued to be a corporation of the nature and kind above set out, up and to and until the 3rd day of March, A. D. 1887.

Second. That on the 1st day of July, A. D. 1862, the Congress of the United States passed an act entitled "An act to punish and prevent the practice of polygamy in the Territories of the United States and other places, and disapproving and annulling certain acts of the legislative assembly of the Territory of Utah," which said act among other things provided in substance and effect that it should not be lawful for any corporation or association, for religious or charitable purposes, to acquire or hold real estate in any Territory of the United States during the existence of the Territorial government of a greater value than $50,000, and that all real estate acquired or held by any such corporation or association contrary to the provisions of said act should be forfeited and escheated to the United States.

Third. That on the 3rd day of March, A. D. 1887, the Congress of the United States passed an act entitled "An act to amend an act entitled 'An act to amend section 5352 of the Revised Statutes of the United States in reference to bigamy, and for other purposes," and approved March 22nd, 1882; and in and by which said act it was provided amongst other things that it should be the duty of the Attorney-General of the United States to institute and prosecute proceedings for forfeit and escheat to the United States the property of all corporations obtained or held in violation of the act of July 1st, 1862, above mentioned; and it was moreover provided by said act of Congress that the act of the legislative assembly of the Territory of Utah, hereinbefore referred to, incorpo-
3 rating the Church of Jesus Christ of Latter-day Saints should, and it thereby was, disapproved and annulled, and that said corporation should be, and it was thereby dissolved, and that it should be the duty of the Attorney-General of the United States to institute proceeding in the supreme court of the Territory of Utah for the purpose of executing the provisions of said act, and to wind up the affairs of said corporation, and for other purposes set out in said act, wherefore the said corporation of the said Church of Jesus Christ of Latter-day Saints became, and from henceforth was, a defunct corporation.

Fourth. That in pursuance of the act of Congress last aforesaid, the United States Attorney-General did, on the 30th day of July, A. D. 1887, commence a suit in the name of the United States in the supreme court of the Territory of Utah, for the purpose of having the dissolution of said corporation judicially ascertained and declared, the winding up of its affairs, the distribution of its estate according to law, the appointment of

a receiver pending the final determination of said suit, and for the purpose of collecting, managing, and preserving all the property of said dissolved corporation.

Fifth. That on the 7th day of November, A. D. 1887, the supreme court of the Territory of Utah, in the suit above named, appointed a receiver for the purposes aforesaid, and in accordance with the order of said court the said receiver has heretofore taken possession of, and now holds, subject to the order of said court, a large amount of property, real and personal, formerly held and owned by said dissolved corporation, and especially the several tracts of real estate hereinafter especially described.

And for that—

4 On the 3rd day of March, A. D. 1887, when said corporation became dissolved aforesaid, it owned and held by and through one John Taylor, its trustee in trust, and by and through certain other persons upon secret trusts, large tracts and parcels of real estate exceeding in value $1,000,000, and among other things the following-described parcels:

1. All of block 87, in Plat A, Salt Lake City survey, in Salt Lake County, Utah Territory, known as the Temple block, of the value of $750,000.

2. All the east half of lot 6, block 75, Plat A, Salt Lake survey, Salt Lake County, Utah Territory, and bounded and described as follows, to wit: Commencing at the northeast corner of said lot 6 and running thence south 10 rods; thence west 10 rods; thence north 10 rods; thence east 10 rods to the place of beginning, known as the Gardo House and grounds, of the value of $50,000.

3. Part of the west half of lot 6, block 75, Plat A, Salt Lake City survey, Salt Lake County, Utah Territory, and bounded and described as follows, to wit: Commencing at a point 10 rods west of *of* the northeast corner of said lot 6 and running thence south 10 rods; thence west 7 rods; thence north 10 rods; thence east 7 rods to the place of beginning, known as the Historian's Office and grounds, of the value of $20,000.

And for that—

The west half of the real estate above described as the Temple block and all buildings and improvements upon the same, and which said block and buildings were at the date of the dissolution of said corporation as aforesaid used exclusively for the worship of God according to the

5 tenets of said Church of Jesus Christ of Latter-day Saints, and which said property had been acquired and held in violation of the act of July 1st, 1862, being in excess of $50,000 in value, was and is exempt from the forfeiture prescribed by said act by virtue of the provisions of said act of Congress of March 3rd, 1887, and the east half of said block was and is of great value and largely in excess of $50,000.

And for that—

In addition to the real estate known as the Temple block, held and used as aforesaid, the said corporation of the Church of Jesus Christ of Latter-day Saints, on the 3rd day of March, A. D. 1887, when it became and was dissolved as aforesaid, had theretofore and subsequently to the passage of the act of Congress of July 1st, A. D. 1862, acquired and was at the date of its dissolution holding in the name of one Theodore McKean,

who held the same upon a secret trust, the following described pieces and tracts of real estate, to wit:

1. All of the east half of lot 6, block 75, Plat A, Salt Lake City survey, Salt Lake County, Utah Territory, and bounded and described as follows: Commencing at the northeast corner of said lot 6 and running thence south 10 rods; thence west 10 rods; thence north 10 rods; thence east 10 rods to the place of beginning, known as the Gardo House and grounds.

2. Part of the west half of lot 6, block 75, Plat A, Salt Lake City survey, Salt Lake County, Utah Territory, bounded and described as follows: Commencing at a point 10 rods west of the northeast corner of said lot 6,
6 and running thence south 10 rods; thence west 7 rods; thence north 10 rods; thence east 7 rods; to the place of beginning, known as the Historian's Office and grounds.

Both of which said tracts of land is of the value of $70,000, which is all and entire in excess of the amount of real estate which said corporation was by law entitled to hold, and no part of said real estate was held or occupied by said corporation as a building or ground appurtenant thereto, for the purpose of the worship of God or parsonage connected ther'with, or as a burial ground.

And the said United States further complains for that—

The said Theodore McKean, on the 3rd day of March, A. D. 1887, held the legal title to all and singular the property hereinbefore described in secret trust for the then corporation, the Church of Jesus Christ of Latter-day Saints, and afterwards, to wit, on the day of July, A. D. 1887, he, the Theodore McKean, attempted to convey the same by his deeds of conveyance to the defendants herein, the said Robert T. Burton, John R. Winder, and William B. Preston, as trustees for the alleged voluntary association described as the Church of Jesus Christ of Latter-day Saints, and to them in trust for the alleged religious and charitable purposes; that the said defendants were parties defen'ant to the original bill filed in the supreme court of the Territory of Utah hereinbefore referred to, and appeared and by answer made claim to the real estate hereinbefore described; that upon a hearing evidence was heard, and their said claim was finally adjudicated and determined as against them and the said late corporation, the Church of Jesus Christ of Latter-day Saints; that the
7 deeds from said Theodore McKena to the defendants hereinbefore mentioned was made without authority, and that no estate passed thereby, and the same was by final decree in said court on the 8th day of October, A. D. 1888, annulled, cancelled, and set aside.

That it was further adjudged and decreed by said court, that the legal title and estate to the real property was acquired by said corporation above mentioned, and its trustees, subsequently to July 1st, 1862, and the same was the property of said corporation at the date of its dissolution, to wit, March 3rd, A. D. 1887; that said decree remains of record and never has been reversed or modified.

And the said United States complains further, for that—

Information against the hereinbefore described property and all claimants thereto was filed in this court on October 8th, 1888, and thereupon a motion issued to the United States marshal of the Territory to seize the

property, and give due notice to all persons claiming the same, or having anything to say why it should not be escheated to the United States, to be and appear before the court at a time and place specified, then and there to make known their claims; that such notice was duly given, and the property seized; that the only persons who have appeared in obedience to said monition, although the time for appearance has long since expired, are the defendents, William B. Preston, Robert T. Burton, and John R. Winder, who have entered and filed their allegations in writing, whereby the' make claim to said real property as the trustees for an alleged voluntary religious association known as the Church of Jesus Christ of Latter-day Saints.

And the said United States, upon its information and belief, alleges and complains for that—

8 The said defendants have no other right, title, or claim to said property, 'r any part thereof, except under and by virtue of the alleged conveyances of July, 1887, from Theodore McKean, being the same which was as hereinbefore stated, adjudged, and decreed to be void, cancelled, and annulled.

And for that—

All of said real property, as hereinbefore described, was acquired by the late corporation of the Church of Jesus Christ of Latter-day Saints subsequently to the 1st day of July, A. D. 1862, and after said corporation had acquired, and while it held the real property of the value in excess of $50,000, and the same was and is subject to forfeiture or escheat to the United States of America; that the defendants have no legal claim, estate, or title to said property, or any part thereof; that none of said real property or its appurtenances is, or ever was, held or occupied exclusively for the purposes of the worship of God, or as a parsonage, or as a burial ground.

Wherefore it is prayed th't the real property hereinbefore and in the title described and the whole thereof to be forfeited and escheated to the United States of America, to be disposed of according to law, and that the said United States have judgment against the defendants for their costs.

CHARLES S. VARIAN,
United States Attorney for Utah,
For W. H. H. MILLER,
Attorney-General of the United States.

(Endorsed:) Title, court, and cause. Information filed Nov. 5th, 1890. Henry G. McMillan, clerk, by Geo. D. Loomis, d'p'ty.

9 In the district court in and for the third judicial district, Territory of Utah, county of Salt Lake.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
CERTAIN REAL ESTATE SITUATE IN THE CITY and county of Salt Lake, Territory of Utah, particularly described as follows: All of the east half of lot 6, block 75, Plat A, Salt Lake City survey, to wit: Commencing at the northeast corner of said lot; thence south 10 rods; thence west 10 rods; thence north 10 rods; thence east 10 rods to the place of beginning, known as the Gardo House and grounds. Also part of the west half of lot 6, block 75, Plat A, Salt Lake City survey, Salt Lake County, to wit: Commencing at a point 10 rods west of the northeast corner of said lot 6 and running thence south 10 rods; thence west 7 rods; thence north 10 rods; thence east 7 rods to the place of beginning, known as the Historian's Office and grounds, and William B. Preston, Robert T. Burton, and John R. Winder, trustees, defendants.

Summons.

The people of the Territory of Utah send greeting to certain real estate situate in the city and county of Salt Lake, Territory of Utah, particularly described as follows: All of the east half of lot 6, block 75, Plat A, Salt Lake City survey, to wit: Commencing at the northeast corner of said lot; thence south 10 rods; thence west 10 rods; thence north 10 rods; thence east 10 rods to the place of beginning, known as the Gardo House and grounds.

Also part of the west half of lot 6, block 75, Plat A, Salt Lake City survey, Salt Lake County, to wit: Commencing at a point 10 rods west of the northeast corner of said lot 6, and running thence south 10 rods; thence west 7 rods; thence north 10 rods; thence east 7 rods to the place of beginning, known as the Historian's Office and grounds, and William B. Preston, Robert T. Burton, and John R. Winder, trustees, defendants:

You are hereby require' to appear in an action brought against you by the above-named plaintiff in the district court of the third judicial district of the Territory of Utah, and to answer the complaint filed therein within ten days (exclusive of the day of service) after the service on you of the summons, if served within this county, or if served out of this county but in this district, within twenty days, or otherwise within forty days, or judgement will be taken against you according to the prayer of said complaint.

The said action is brought to have a decree of this court adjudging that the real property described in the title of complaint herein and hereinafter

described, and the whole thereof, be forfeited and escheated to the
10 United States of America to be disposed of according to law, and that the said United States have judgment against the defendants for their costs. Said property is described as follows: Certain real estate situate in the city and county of Salt Lake, Territory of Utah, being the east half of lot 6, block 75, Plat A, Salt Lake City survey, commencing at the northeast corner of said lot; thence south 10 rods; thence west 10 rods; thence north 10 rods; thence east 10 rods to the place of beginning, known as the Gardo House and grounds. Also part of the west half of lot 6, block 75, Plat A, Salt Lake City survey, commencing at a point 10 rods west of the northeast corner of said lot 6 and running thence south 10 rods; thence west 7 rods; thence north 10 rods; thence east 7 rods to the place of beginning known as the Historian's Office and grounds.

And you are hereby notified that if you fail to appear and answer the said complaint, as above required, the said plaintiff will apply to the court for the relief demanded herein.

Witness the Hon. Charles S. Zane, judge, and the seal of the district court of the Third judicial district, in and for the Territory of Utah, this 5th day of November, in the year of our Lord one thousand eight hundred and ninety.

[Seal of court.] HENRY G. McMILLIAM,
Clerk,
By GEO. D. LOOMIS,
Deputy Clerk.

TERRITORY OF UTAH,
County of Salt Lake, ss:

OFFICE OF U. S. MARSHAL.

I hereby certify and return, that I received the within summons on the 8th day of November, 1890; that on the 10th day of November, 1890, in the city and county of Salt Lake, Territory of Utah, I served the same upon the within-named defendants, as follows: Upon Robert Burton and John R. Winder, trustees, by delivering to and leaving with each, personally, a true copy of said summons at said defendant's usual place of abode, with Harriet A. Preston, said defendant's wife, she being a suitable person, and over fourteen years of age. I further certify that attached to the copy so delivered and left with said Robert Burton was a certified copy of the complaint referred to in the within summons.

E. H. PARSONS,
U. S. Marshal,
By BOMAN CANNON,
Deputy Marshal.

Salt Lake City, Utah, December 10th, 1890.
Fees, $6.00.

(Endorsed:) Filed on return Dec. 11th, 1890. Henry G. McMillan, clerk, by Geo. D. Loomis, dept.

11 IN THE DISTRICT COURT FOR THE THIRD JUDICIAL DISTRICT OF THE TERRITORY OF UTAH, COUNTY OF SALT LAKE.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
CERTAIN REAL ESTATE SITUATED IN THE CITY and county of Salt Lake, Territory of Utah, particularly described as follows: All of the east half of lot 6, block 75, Plat A, Salt Lake City survey, to wit: Commencing at the northeast corner of said lot; thence south 10 rods; thence west 10 rods; thence north 10 rods; thence east 10 rods, to the place of beginning, known as the Gardo House and grounds. Also part of the west half of lot 6, block 75, Plat A, Salt Lake City survey, Salt Lake County, to wit: Commencing at a point 10 rods west of the northeast corner of said lot 6, and running thence south 10 rods; thence west 7 rods; thence north 10 rods; thence east 7 rods to the place of beginning, known as the Historian's Office and grounds; and William B. Preston, Robert T. Burton, and John R. Winder, trustees, defendants.

Answer.

Now come the above-named defendants, William B. Preston, Robert T. Burton, and John R. Winder, trustees, and answering complaint filed herein on the 5th day of November, 1890, deny that their claim to the land and premises described in said complaint was ever finally adjudicated or determined against them by any court or in any action; deny that *none* of said real property or its appurtenances is, or ever was, held or occupied exclusively for the purpose of worship of God, or as a parsonage, or as a burial ground, and deny that the said property or any part thereof ever was or is subject to forfeiture or escheat to the United States of America.

The defendants allege that all the land mentioned in the com-
12 plaint and described as "all of block 87, in Plat A, Salt Lake City survey, in the county of Salt Lake and Territory of Utah, known as the Temple block," was, on the 8th day of October, 1888, by a decree of the supreme court of the Territory of Utah, made and entered in the case of the United States of America vs. the late corporation of the Church of Jesus Christ of Latter-day Saints, and John Taylor, late trustee in trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, late assistant trustees in trust of said corporation, duly set apart to the said Church of Jesus Christ of Latter-day Saints, as an unincorporated body and religious sect, to be held, managed, and controlled by these defendants for the benefit of said religious sect and body, and for the erection and use by them of houses of worship, and for their use and convenience in the lawful exercise of worship according to the tenets of said sect or body, and that said decree remains of record and has never been reversed or modified.

The defendants further answering say that the plaintiff ought not to be permitted to maintain or prosecute this action, because, as defendants allege, all proceedings to forfeit or escheat such property or any part thereof are barred by section 1047 of the Revised Statutes of the United States, and the said action did not, nor did the alleged cause of the forfeiture mentioned in the complaint accrue within five years before the commencement of these proceedings or the filing of said complaint, or within five years prior to said dissolution of the said corporation.

Further answering, these defendants admit that the Church of Jesus Christ of Latter-day Saints became and was a corporation at the
13 time and in the manner related in said complaint, and that the said corporation was dissolved as therein stated; that said corporation embraced and included all the members of that religious sect or body of religious worshippers known as the Church of Jesus Christ of Latter-day Saints; that from and after said dissolution *fo* said corporation hitherto all the members of said body of religious worshippers have been and now are organized and existing as a voluntary religious association known as the Church of Jesus Christ of Latter-day Saints; that the members of said voluntary religious association exceed in number two hundred thousand.

And these defendants allege:

That they are the owners of the property mentioned in said complaint and hereinafter described, and that they hold the legal title thereto as trustees for said voluntary religious association known as the Church of Jesus Christ of Latter-day Saints in trust for religious and charitable purposes; that the said church is and has been ever since the 3d of March, 1887, a voluntary association for religious and charitable uses and purposes, and has a right to own and hold such property, through trustees, to be used for such purposes; that the said defendants were in possession of said property at the time it was seized by the United States marshal pursuant to the information proceedings had therein, and that said property is described as follows, to wit:

All of the east half of lot 6, block 75, Plat A, Salt Lake City survey, Salt Lake County, Utah Territory, and bounded and described as follows: Commencing at the northeast corner of said lot 6 and running thence south 10 rods; thence west 10 rods; thence north 10 rods; thence east 10 rods to the place of beginning, known as the Gardo House and grounds.

14 Part of the west half of lot 6, block 75, Plat A, Salt Lake City survey, Salt Lake County, Utah Territory, bounded and described as follows: Commencing at a point 10 rods west of the northeast corner of said lot 6, and running thence south 10 rods; thence west 7 rods; thence north 10 rods; thence east 7 rods to the place of beginning, known as the Historian's Office and grounds.

The defendant's claim to said property is founded on the following facts, to wit: The said real estate, known as the Gardo House and grounds, was owned by Brigham Young individually at the time of his death, 1877, and was thereafter transferred and conveyed by his executors to John Taylor, as trustee in trust for the corporation of the Church of Jesus Christ of Latter-day Saints, for a valuable consideration, pursuant to the powers on them vested by the will of said Brigham Young; subsequently, on the 24th of April, 1878, the said John Taylor, as trustee in trust, transferred

and conveyed the same to Theodore McKean, in trust for said corporation, who held the same upon said trust until the 2nd day of July, 1887, when he conveyed the same to William B. Preston, Robert T. Burton, and John R. Winder, trustees in trust, for the use, benefit, and behoof of the president and leader of that certain body of religious worshippers known and called the Church of Jesus Christ of Latter-day Saints, for a residence or parsonage.

And the defendant's allege that there are large and valuable buildings and improvements on said land and premises which have been erected or paid for by said church, and which said improvements have cost more and are of greater value than thousand dollars.

The other piece of real estate, known as the Historian's Office and
15 grounds, was purchased by said church on the 10th day of September, 1883, and the title thereto was taken and held by one Theodore McKean, in trust for said church, who has, ever since the date aforesaid, held and does now hold the same in trust for said church, as and for a part of the parsonage of the president or head of such church, and as a church library for said church.

Defendant's allege that no part of said property was ever acquired or held in violation of the provisions of any law of the United States.

That the real estate known as the Gardo House and grounds was acquired by said church as aforesaid, for and as a parsonage or residence for the president or head of said church of Jesus Christ of Latter-day Saints, and the purchase price thereof was paid from the voluntary contributions and donations made to said Church from time to time, by the members thereof, to be held, managed, and applied by said church, through its officers and trustees, chosen and elected by the members thereof, to religious and charitable purposes and uses, in which said church and its members were and are interested; that the said property and the whole thereof ever since the same was acquired by said church as aforesaid was at all times, prior, to the time when the same was seized and taken possession of by said receiver, as mentioned in the complaint, held and used by the said church, through its officers and trustees chosen as aforesaid, for religious and charitable uses and purposes, to wit: As and for a parsonage or residence for the president or head of said church; and that during all the said period the said property was by the said church held, used, and occupied as aforesaid, with the knowledge, consent, and approbation of all the members of said church through whose voluntary contributions
16 and donations the same was as aforesaid purchased and acquired.

That at no time was the same or any part thereof used or occupied to establish, maintain, aid, support, or encourage the practice of polygamy or plural marriage or any other unlawful purpose.

That all the property known as the Historian's Office and grounds, mentioned in said complaint, was acquired by said church as aforesaid, for the purpose and to be held, occupied, and used in connection with said parsonage, and as a part thereof, as a church library or place for the safe and proper custody of the books, papers, records, and archives of said church; that the purchase price of all said premises was paid from voluntary contributions and donations made to said church by the members thereof, to be held and applied by said church through its officers and trustees, chosen and elected by the members thereof, to religious and charitable uses and purposes in which said church and its members were and are interested.

That said property and the whole thereof has at all times, since the same was acquired by said church as aforesaid, prior to the time when the same was seized and taken possession of by said receiver as mentioned in said complaint, held and used by said church, through its officers and trustees chosen as aforesaid, for such religious and charitable uses and purposes, to wit, in connection with said parsonage and as a part thereof, as a church library, or place for the safe and proper custody of the books, records, papers, and archives of said church, and that during all said period said property was by said church held, used and occupied as aforesaid with the knowledge, consent and approbation of all the members of said church, through whose voluntary contributions and donations the same
17 was purchased as aforesaid. That at no time was the same or any part thereof used, or applied to establish, maintain, aid, support, or encourage the practice of plural marriage or any other unlawful purpose.

The defendants further allege that the doctrine of bigamy, polygamy or plurality of wives, is not and has not been a doctrine or practice of said Church of Jesus Christ of Latter day Saints since the 6th day of October, 1890, nor has the practice thereof since then been indulged, recognized*m*, encouraged, or countenanced by any of the authorities or members of said church, but the same on the date last a*of*resaid was permanently abandoned and prohibited by said church.

Wherefore these defendants pray that they may by this court adjudged and decreed to hold said property known as the Gardo House and the whole thereof in trust for said voluntary religious association, for the uses and purposes for which the same has been heretofore held by them as a*of*resaid and that the said Theodore McKean may be by such decree adjudged to hold said property known as the Historian's Office and grounds, and the whole thereof, in trust for said voluntary religious association for the uses and purposes for which the same has been heretofore held by him as aforesaid.

F. S. RICHARDS,
LE GRAND YOUNG,
DICKSON & STONE,
Attorneys for Defendants.

TERRITORY OF UTAH,
County of Salt Lake, ss:

John Winder, being first duly sworn, deposes and says: I am
18 one of the defendants named in and who make the foregoing answer; I have heard said answer and know the contents thereof; that the same is true of my own knowledge, except the matters and things therein stated on information and belief, and that as to those matters I believe it to be true.

JOHN R. WINDER.

Subscribed as sworn to *n*efore me this 14th day of September, A. D. 1890.

JOHN H. MAYBE,
Notary Public.

19 No. 7505.

IN THE DISTRICT COURT FOR THE THIRD JUDICIAL DISTRICT OF UTAH TERRITORY, COUNTY OF SALT LAKE.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
CERTAIN REAL ESTATE SITUATE IN THE CITY and county of Salt Lake, Territory of Utah, particularly desc'ibed as follows: All the east ½ of lot 6, block 75, Plat A, Salt Lake City survey, to wit: Commencing at the northeast corner of said lot; thence south 10 rods; thence west 10 rods; thence north 10 rods; thence east 10 to the place of beginning, known as the Gardo House and grounds. Also part of the west ½ of lot 6, block 75, Plat A, Salt Lake City survey, Salt Lake County, to wit: Commencing at a point 10 rods west of the northeast corner of said lot 6; thence cunning south 10 rods; thence west 7 rods; thence north 10 rods; thence east 7 rods to the place of beginning, known as the Historian's Office and grounds, and William B. Preston, Robert T. Burton, and John R. Winder, trustees, defendants.

Petition in intervention.

Now comes James P. Freeze and Spencer Clawson, and, by leave of the court first had and obtained, file this petition in interventione in the above-entitled cause on behalf of themselves and all others who are members of the Church of Jesus Christ of Latter-day Sainys, a voluntary religious association, and for their grounds of intervention allege:

That the members of said Church are more than two hundred thousand in number, and so numerous that they can not, without manifest inconvenience and oppressive delays in said action, be brought before the court; that all of said parties have an interest in common with said intervenors in the subject to this petition and the questions involved in this action; wherefore said intervenors file this petition for the benefit of all of said members.

20 That the said Church of Jesus Christ of Latter-day Saints became and was a corporation at the time and in the manner related in the plaintiff's complaint, and that the said corporation was dissolved as therein stated; that said corporation embraced and included all the members of that religious sect or body of religious worshippers known as the Church of Jesus Christ of Latter-day Saints; that from and after said dissolution of said corporation hitherto all the members of said body of religious worshippers have been and now are organized and existing as a voluntary religious association known as the Church of Jesus Christ of Latter-day Saints; that the members of said voluntary religious association exceed in number two hundred thousand.

That these intervenors and the members of said church are equitably the owners of the property mentioned in said complaint and hereinafter described; that the said church is and has been ever since the 3rd day of March, 1887, a voluntary association for religious and charitable uses and purposes, and has the right to own an dhold such property through trustees to be used for such purposes; that the said defendants were in possession of said property at the time it was seized by the United States marshal pursuant to the information proceedings had herein, and that said property is described as follows, to wit: All of the east ½ of lot 6, block 75, plat A, Salt Lake City survey, Salt Lake County, Utah Territory, and bounded and described as follows: Commencing at the northeast corner of said lot 6, and running thence south 10 rods; thence west 10 rods; thence north 10 rods; thence east 10 rods to the place of beginning, known as the Gardo House and grounds.

21 Part of the west half of lot 6, block 75, plat A, Salt Lake City survey, Salt Lake County, Utah Territory, bounded and described as follows, to wit: Commencing at a point 10 rods west of the northeast corner of said lot 6, and running thence south 10 rods; thence west 7 rods; thence north 10 rods; thence east 7 rods to the place of beginning, known as the Historian's Office and grounds.

That these intervenors' claim to said property is founded on the following facts, to wit: The said real estate known as the Gardo House and grounds was owned by Brigham Young, individually, at the time of his death in 1877, and was thereafter transferred and conveyed by his execuiors to John Taylor, as trustee in trust for the corporation of the Church of Jesus Christ of Latter-day Saints, for a valuable consideration, pursuant to the powers in them vested by the will of the said Brigham Young. Subsequently, on the 24th day of April, 1878, the said John Taylor, as trustee in trust, transferred and conveyed the same to Theodore McKean in trust for the said corporation, who held the same upon said trust, and continued to hold said property upon the trusts aforesaid from thence until the dissolution of said corporation.

And these intervenors all'ge that there are large and valuable buildings and improvements on said land and premises which have been erected or paid for by said church, and which said improvements have cost more and are of greater value than thirty thousand dollars.

The other piece of real estate known as the Historian's Office and grounds was purchased by said church on the 10th day September, 1883, and the title thereto was taken and held by one Theodore McKean, in trust for said church, who has ever since the date last aforesaid held and does now hold the same in trust for said church as and for a part of the parsonage of the president or head of such church, and as a church library for said

22 church.

These intervenors allege that no part of said property was ever acquired or held in violation of the provisions of any law of the United States.

That the real estate known as the Gardo House and grounds was acquired by said church as aforesaid for and as a parsonage or residence for the president or the head of said Church of Jesus Christ of Latter-day Saints, and the purchase price thereof was paid from voluntary contributions and donations made to the said church, from time to time, by the members

thereof, to be held, managed and applied by said church, through its officers and trustees chosen and elected by the members thereof, to religious and chartiable purposes and uses in which said church and its members were and are interested; that the said property and the whole thereof, ever since the same was acquired by said church as aforesaid, was at all times prior to the time when the same was seized and taken possession of by said receiver, as mentioned in the complaint, held and used by said church, through its officers and trustees chosen as aforesaid, for the religious and charitable uses and purpose, to wit: As and for a parsonage or residence for the president or head of said church, and that during all said period said property was by said church held, used, and occupied as aforesaid with the knowledge, consent, and approbation of all the members of said church, through whose voluntary contributions and donations the same was as aforesaid purchased and acquired. That at no time was the same or any part thereof used or occupied to establish, maintain, aid, support, or encourage the practice of polygamy or plural marriage or any other unlawful purpose.

23 That all said property known as the "Historian's Office" and gronuds mentioned in said complaint was acquired by said church as aforesaid for the purpose and to be held, occupied, and used in connection with the said parsonage and as a part thereof, as a church library or place for the safe and proper custody of the books, papers, records, and archives of said church; that the purchase price of all of said premises was paid from voluntary contributions and donations made to said church by the members thereof, to be held and applied by said church, through its officers and trustees chosen and elected by the members thereof, to religious and charitable uses and purposes, in which said church and its members were and are interested.

That said property and the whole thereof has at all times since the same was acquired by said church as aforesaid, prior to the time when the same was seized and taken possession of by said receiver as mentioned in said complaint, held and used by said church, through its officers and trustees chosen as aforesaid, for such religious and charitable purposes and uses, to wit, in connection with said parsonage and as a part thereof, as a church library or a place for the safe and proper custody of the books, records, papers, and archives of said church, and that during said period said property was by said church held, used, and occupied as aforesaid, with the knowledge, consent, and approbation of all the members of said church, through whose voluntary contributions and donations the same was purchased as aforesaid. That at no time was the same or any part thereof used or applied to establish, maintain, aid, support, or encourage the practice of plural marriage or any othar unlawful purpose.

These intervenors say that the plaintiff ought not to be permitted to maintain or prosecute this action, because the proceedings to for-

24 feit or escheat such property, or any part thereof are barred by section 1047 of the Revised Statutes of the United States, and the said action did not, nor did the alleged cause of forfeiture mentioned in the complaint, accrue within five years before the commencement of these proceedings or the filing of said complaint or within five years prior to said dissolution of said corporation.

Wherefore your petitioners pray that the plaintiff take nothing by its said action and that it be decreed that the said property belongs to the

unincorporated voluntary religious association known as the Church of Jesus Christ of Latter-day Saints, and that the members thereof be authorized to appoint a trustee or trustees to hold, manage, and apply the said property to the purposes for which it was originally given; that the United States marshal deliver the possession of said property, together with the proceeds and income in his hands, to such trustee or trustees as may be named and appointed at a general conference of the members of said church, and for such other and further relief as may be equitable and just.

F. S. RICHARDS,
LE GRAND YOUNG,
DICKSON & STONE,
Attorneys for Intervenors.

(Endorsed:) Title, court, and cause. Amended complaint in intervention. Filed Nov. 7th, 1891.

25 IN THE DISTRICT COURT IN AND FOR THE THIRD JUDICIAL DISTRICT OF UTAH TERRITORY, COUNTY OF SALT LAKE.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
CERTAIN REAL ESTATE SITUATED IN THE CITY and county of Salt Lake, Territory of Utah, particularly described as follows: All the east half of lot 6, block 75, Plat A, Salt Lake City survey, to wit: Commencing at the northeast corner of said lot, thence south 10 rods; thence west 10 rods; thence north 10 rods; thence east 10 rods to the place of beginning, known as the Gardo House and grounds. Also a part of the west half of lot 6, block 75, Plat A, Salt Lake City survey, Salt Lake County, to wit: Commencing at a point 10 rods west of the northeast corner of said lot 6, and running thence south 10 rods; thence west 10 rods; thence north 10 rods; thence east 7 rods to the place of beginning, known as the Historian's Office and grounds, and William B. Preston, Robert T. Burton and John R. Winder, trustees, defendants.

Answer to petition in intervention.

Now comes the United States of America, above named, plaintiff herein, and answering the petition in intervention, filed on behalf of James P. Freeze and Spencer Clawson, on this 7th day of November, 1891, denies each and every material allegation in said petition contained.

W. H. H. MILLER,
Attorney-General.
CHAS. S. VARIAN,
United States District Attorney for Utah.

(Endorsed:) Answer to petition in intervention. Filed Nov. 7th, 1891. Henry G. McMillan, clerk.

26 IN THE DISTRICT COURT IN AND FOR THE THIRD JUDICIAL DISTRICT, UTAH TERRITORY.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
CERTAIN REAL ESTATE SITUATED IN THE CITY and county of Salt Lake, Territory of Utah, particularly described as all of the east ½ of lot 6, block 75, Plat A, Salt Lake City survey, to wit: Commencing at the NE. corner of said lot, thence south 10 rods; thence west 10 rods; thence north 10 rods; thence east 10 rods to the place of beginning, commonly known as the Gardo House and grounds. Also that part of the west ½ of lot 6, block 75, Plat A, Salt Lake Cuty survey, to wit: Commencing at a point 10 rods west of the NE. corner of said lot 6, and running thence south 10 rods; thence west 7 rods; thence north 10 rods; thence east 7 rods to the place of beginning, known as the Historian's Office and grounds, and William B. Preston, Robert T. Burton, and John R. Winder, trustees, defendants.

This cause coming regularly on to be heard before the court on the 7th day of November, A. D. 1891, a jury having been, in writing, expressly waived, all the parties appearing by their respective counsel, evidence was adduced and arguments heard and the cause submitted to the court for its final decision. Now, on this day, the court being fully advised in the law and premises, makes the following as its—

Findings of fact.

1. That during all the time from the 19th day of January, A. D. 1855, to and including the 3rd day of March, A. D. 1887, the Church of Jesus Christ of Latter-day Saints was a corporation for religious and charitable purposes, organized and existing under the laws of the Territory of Utah; that on the 3rd day of March, A. D. 1887, said corporation was dissolved.

27 2. That all of that certain tract and parcel of land now known and designated in the pleadings herein and in the officeial survey of Salt Lake City as block 87 in Plat A, Salt Lake City survey, commonly known as the Temple block, situated in the city and county of Salt Lake and Territory of Utah, was taken possession of by the agents of said Church of Jesus Christ of Latter-day Saints, then existing as a voluntary sect, when Salt Lake City was first laid out and surveyed in 1848, and since that date has been in the possession of said church as a voluntary sect until it became incorporated as aforesaid, and then as a corporation; that at the time the same was taken possession of, as aforesaid, it was a part of the public domain, and continued to be such until said land was enteredt by the mayor of said city, along with other lands, on the 21st

day of November, 1871, under the town-site act of Congress, entitleed an "Act for the relief of cities and towns upon the public lands," *m* approved March 2nd, 1867; that on the 1st day of June, 1872, that same was conveyed by the mayor of said Salt Lake City to the trustees in trust of said corporation for the sole use and benefit of said church and corporation, in whom the title remained until the act of Congress of March 3rd, 1887, took effect; that on the 2nd day of March, 1867, the said premises were, ever since have been, and now are of a value largely exceeding $50,000; that during all of said period the said corporation was the real owner of, and in actial possession of, all of the said tract of land.

3. That the real property first described in the title hereof, to wit: The east ½ of lot 6, in block 75, Plat A, Salt Lake City survey, was conveyed by the mayor of Salt Lake City to Brigham Young, in 1872, and
28 was possessed and owned by said Brigham Young individually at the time of his death in ———, 1877, and was thereafter transferred and conveyed by his executors to John Taylor, as trustee in trust, for the said corporation, the Church of Jesus Christ of Latter-day Saints, for a valuable consideration, pursuant to the powers in them vested by the will of the said Brigham Young; that thereafter, on the 24th day of April, 1878, the said John Taylor, as trustee in trust, trasnferred and conveyed said premises to one Theodore McKean, on a secret trust for said corporation; that the said Theodore McKean held said premises upon said trust until the 2nd day of July, 1887, when he made a conveyance of the same to the defendants, William B. Preston, Robert T. Burton, and John R. Winder, as trustees; that at the date of the dissolution of said corporation, to wit, on March 3rd, 1887, the legal title to said premises was in, and held by, the said Theodore McKean, in trust, however, for the said late corporation and its use and benefit; that on the 8th day of October, 1888, the supreme court of the Territory of Utah, in a cause then pending before it, to which the late corporation of the Church of Jesus Christ of Latter-day Saints, the said Theodore McKean, and the defendants herein, Robert Burton, William B. Preston, and John R. Winder, were parties, and of which cause and the parties thereto the said supreme court then and there had jurisdiction, found, adjudged, and decreed that the said premises on the 3rd day of March, 1887, the date of the dissolution of said corporation as aforesaid, was held on a secret trust by the said Theodore McKean, for the said late corporation, and was then owned and held as its property by the said corporation; and the said supreme court, in the cause so pending as aforesaid, did, at the same time, adjudge and decree that the conveyance hereinbefore mentioned, dated
29 July 2nd, 1887, from the said McKean and wife to the defendants herein, as trustees for the premises known as the Gardo House and grounds, was executed without authority, and that no estate in the property set out in said deed passed, and the same was, by the judgment of the said court, annulled, cancelled, and set aside.

4. That said Gardo House and grounds being the east half of said lot 6, block 75, plat*b* A, Salt Lake City survey, we'e used and occupied as a residence by John Taylor, the president of said Church of Jesus Christ of Latter-day Saints, from the year 1878 until the time of his death in ——, A. D. 1887.

5. That the other property described in the title herein, being a part of the west ½ of lot in block 75, Plat A, Salt Lake City survey, to wit: Commencing at a point 10 rods west of the NE. corner of said lot, and running thence south 10 rods; thence west 7 rods; thence north 10 rods; thence east 7 rods to the place of beginning, commonly known as the Historian's Office and grounds, was taken possession of by one Albert T. Rockwood in 1848, and was then a part of the public domain and so continued to be until the 21st day of November, A. D. 1871, when the said land was entered, along with other lands under the town site act of March 2nd, 1867, by the then mayor of Salt Lake City; that on the 3rd day of October, 1855, the corporation, the Church of Jesus Christ of Latte'-day Saints, through its trustees in trust, Brigham Young, purchased the claims of said Albert T. Rockwood to said premises and erected thereon a building which has ever since been known as the Historian's Office and residence; that said building was large enough to accom'odate the family and furnish an office for the historian of said church; that from year 1848 until the time of his death in 1875, George A. Smith was the historian of said church
30 and lived in said building with his family and had the custody of the books, papers, and records of said church relating to its history and the public acts of its officers and members; that the same have always been kept in said building, and from the time of its erection until the present, at the cost of said church, and that such office is and has been necessary for the use of such historian in the discharge of his duty; that on the —— day of ——, A. D. 1872, the mayor of Salt Lake City conveyed said premises by deed to the said George A. Smith, and that after his death the said premises were conveyed to his widow and one of his granddaughters, who subsequently conveyed the same to one Theodore McKean, for value; that the said Theodore McKean has ever since said date held said premises on a secret trust for the use and benefit of the said corporation; that the same are immediately west of and adjoining the Gardo House grounds and premises.

6. That on the 3rd day of March, A. D. 1887, the date of the dissolution of said late corporation, the Church of Jesus Christ of Latter-day Saints, all the premises described hereinbefore and in the title, comprising the said Gardo House and Historian's Office and grounds, were really owned by said late corporation, the legal title thereto being held, as hereinbefore mentioned, in trust for its sole use and benefit.

7. That neither the said east ½ of said lot 6, being the Gardo House and grounds, nor the portion of the west ½ of said lot 6, designated as the Historian's Office and grounds, has ever been used as buildings or grounds appurtenant thereto for the purposes of the worship of God, or of parsonages connected therewith, or for burial grounds by the said late corporation of the said Church of Jesus Christ of Latter-day Saints, nor is
31 the said real estate or any part of it necessary for such purposes for the unincorporated religious sect known as the Church of Jesus Christ of Latter-day Saints.

8. That on the 8th day of October, A. D. 1888, the supreme court of the Territory of Utah, in a cause then pending before it, to which said late corporation of the Church of Jesus Christ of Latter-day Saints, and the defendants herein, William B. Preston, Robert Burton, and John R.

Winder, and the said Theodore McKean, and the members of the unincorporated association and religious sect known as the Church of Jesus Christ of Latter-day Saints, appearing by George Romney, Henry Dinwoodey, James Watson, and John Clark, in behalf of themselves and the said members, were parties, and of which and the parties thereto the said supreme court then and there had jurisdiction, thereto, found, adjudged, and decreed that all of the property hereinbefore mentioned was, on the 3rd day of March, A. D. 1887, the date of the dissolution of the corporation, owned by and the property of the late corporation, the Church of Jesus Christ of Latter-day Saints, and that none of it had ever been used as buildings, or grounds appurtenant thereto, for the purposes of the worship of God, or of parsonages connected therewith, or for burial grounds, by the said late corporation of the Church of Jesus Christ of Latter-day Saints, and that no part of it was necessary for such purposes for the unincorporated religious sect known as the Church of Jesus Christ of Latter-day Saints.

9. That all of block 87 in Play A, Salt Lake City survey, commonly known as the Temple Block, situate in the city and county of Salt Lake and Territory of Utah, hereinbefore mentioned, and largely exceeding in value the sum of $50,000, has been heretofore claimed by the said corporation, the Church of Jesus Christ of Latter-day Saints, and its
32 successor, the Church of Jesus Christ of Latter-day Saints, an unincorporated body and religious sect composed of all the members of the said late corporation, as property held and occupied by said late corporation and its successor, the said unincorporated association and religious sect, exclusively for the purposes of the worship of God and, upon the nomination of the regularly constituted authorities of said unincorporated association, as provided by law, was by the decree of the supreme court of the Territory of Utah in the cause pending before it, mentioned in finding 8, duly set apart to said unincorported association for the benefit of said unincorporated body and religious sect, and for the perfection and use by them of houses of worship according to the tenets of said sect and body, which said property, on the 3rd day of March, A. D. 1887, the date of the dissolution of the said late corporation, largely exceeded, and does now largely exceed, in value the sum of $50,000.

10. That at the dates of acquiring the property particularly described herein as a part of lot 6, in block 75, Plat A, Salt Lake City survey, and known as the Grado House and grounds and the Historian's Office and grounds. the said late corporation of the Church of Jesus Christ of Latter-day Saints had acquired and were holding all and singular the real property described as block 87 in Plat A, Salt Lake City survey, consisting of 10 acres of land and commonly known as the Temple Block, and then and ever since of the value of $50,000 and more.

11. That these proceedings were commenced in October 8th, 1888, by filing a general information against the p'operty described in the title and in these findings; that thereupon monition was issued and the prop-
33 erty seized by the marshal and notice given to all claimants; that no claimants other than the defendants, William B. Preston, Robert Burton, and John R. Winder, trustees, have ever appeared or made claim to the p'operty, or any part thereof, except that upon the trial hereof

James P. Freeze and Spencer Clawson were permitted to file a petition in interve'tion whereby they claimed the said property on behalf of themselves and all others who ar' members of the Church of Jesus Christ of Latter-day Saints, the unincorporated body and religious sect hereinbefore mentioned.

12. That neither of said intervenors, James P. Freeze and Spencer Clawson, and neither of the defendants, William B. Preston, Robert Burton, and John R. Winder, as trustees or otherwise, have any right, title, claim, or interest in or to any of the property mentioned in the title hereof and in these findings.

As conclusions of law.

The court finds that all of the real property described in these findings and in the title hereof, and known as the Gardo House and grounds, and the Hist'rian's Office and grounds, was acquired on the 3rd day of March, A. D. 1887, the date of the dissolution, held by the late corporation of the Church of Jesus Christ of Latter-day Saints, in violation of the act of Congress, approved July 8th, 1862; that no part thereof was or is held or occupied exclusively for the purposes of the worship of God, or of parsonages connected therewith, or of burial grounds; and it is subject to be forfeited and escheated to the United States, as provided by section 13 of an act of Congress entotled "An act to amend an act entitled
34 'An act to amend section 5352 of the Revised Statutes of the United States in reference to bigamy, and for other purposes.'"

Let judgment be entered accordingly.

C. S. ZANE,
Judge.

Dated Dec. 4th, 1891.

Filed Dec. 5th, 1891.

HENRY G. MCMILLAN,
Clerk,
By GEORGE D. LOOMIS,
Deputy.

35 IN THE DISTRICT COURT IN AND FOR THE THIRD JUDICIAL DISTRICT, UTAH TERRITORY.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
CERTAIN REAL ESTATE SITUATE IN THE CITY and county of Salt Lake, Territory of Utah, particularly described as all of the east ½ of lot 6, block 75, Plat A, Salt Lake City survey, to wit: Commencing at the NE. corner of said lot; thence *E*south 10 rods; thence west 10 rods; thence north 10 rods; thence east 10 rods to the place of beginning, commonly known as the Gardo House and grounds. Also that part of the west ½ of lot 6, block 75, Plat A, Salt Lake City survey, Salt Lake County, to wit: Commencing at a point 10 rods west of the NE. corner of said lot 6, and running thence south 10 rods; thence west 7 rods; thence north 10 rods; thence east 7 rods to the place o*g* beginning, known as the Historian's Office and grounds, and William B. Preston, Robert T. Burton, and John R. Winder, trustees, defendants. James P. Freeze and Spencer Clawson, intervenors.

This cause came regularly on to be *h*eard on the 7th day of November, A. D. 1891, before the court, sitting without a jury, which was expressly waived in writing by the respective parties, whereupon evidence was adduced and counsel heard and the cause *a*ubmitted to the court for its final decision. Afterwards, being fully informed in the law in the premises, the court delivers its decision and makes its findings of fact and conclusions of law, which were filed, and orders that judgment be entered accordingly.

Wherefore by reason of the law and findings aforesaid;

It is ordered and adjudged that the defendants, William B. Preston, Robert T. Burton, and John R. Winder, trustess, and James P. Freeze, and Spencer Clawson, intervenors, herein, have no*r* right, interest, title, or claim of any kind or description, and none of the members of the
36 voluntary religious*m* association known as the Church of Jesus Christ of Latter-day Saints have any right, title, interest, or claim of any kind or description in or to any of the premises hereinafter mentioned and described, or to the possession thereof or any part thereof.

And it is further ordered and adjudged that the following lands and premises, situate in the city and county of Salt Lake, Territory of Utah, and commonly known as the Gardo House and grounds, and the Historian's Office and grounds, and the whole thereof, be forfeited and escheated to the plaintiff, the United States of America, as real property, acquired and held on the 3rd day of March, A. D. 1887, by the late corporation, the Church of Jesus Christ of Latter-day Saints, in violation of the laws of the said United States, that is to say:

Certain real estate situate in the city and county of Salt Lake, Territory of Utah, particularly described as all of the east ½ of lot 6, block 75, Plat

A, Salt Lake City survey, to wit: Commencing at the NE. corner of said lot; thence south 10 rods; thence west 10 rods; thence north 10 rods; thence east 10 rods to the place of beginning, commonly known as the Gardo House and grounds; also that part of the west ½ of lot 6, block 75, Plat A, Salt Lake City survey, to wit: Commencing at a point 10 rods west of the NE. corner of said lot 6, and running thence south 10 rods; thence west 7 rods; thence north 10 rods; thence east 7 rods to the place of beginning, known as the Historian's Office and grounds; and the said land and premises, and the whole thereof, are hereby forfeited and escheated to the United States of America.

And it is further ordered and adjudged that the plaintiff do have
37 and recover from the defendants, William B. Preston, Robert T. Burton, and John R. Winder, trustees, the costs of this proceeding herein incurred, taxed at dollars ($).

Dated this 4th day of December, A. D. 1891.

C. S. ZANE,
Judge.

Attest:
HENRY G. MCMILLAN, *Clerk*,
By GEORGE D. LOOMIS, *Deputy.*

Filed Dec. 5th, 1891.

HENRY G. MCMILLAN,
Clerk.

38 IN THE DISTRICT COURT IN AND FOR THE THIRD JUDICIAL DISTRICT, UTAH TERRITORY.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
CERTAIN REAL ESTATE SITUATED IN SALT Lake City and county of Salt Lake, Territory of Utah, particularly described as all of the east ½ of lot 6, block 75, Plat A, Salt Lake City survey, to wit: Commencing at the NE. corner of said lot and running thence south 10 rods; thence west 10 rods; thence north 10 rods; thence east 10 rods to the place of beginning, commonly known as the Gardo House and grounds. Also that part of the west ½ of lot 6 in block 75, Plat A, Salt Lake City survey, to wit: Commencing at a point 10 rods west of the NE. corner of said lot 6, and running thence south 10 rods; thence west 7 rods; thence north 10 rods; thence east 7 rods to the place of beginning, known as the Historian's Office and grounds; and William B. Preston, Robert T. Burton, and John R. Winder, trustees, defendants.

Statement on motion for a new trial as allowed and settled by the court.

This case being regularly called was tried before the court without a jury on the 7th day of November, 1891. Testimony was adduced by

both parties, and among other things the record of the supreme court of Utah Territory in the case of the United States of America against the late corporation of the Church of Jesus Christ of Latter-day Saints, John Taylor, late trustee in trust, Wilford Woodruff, Lorenza Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, late assistant trustees in trust of said corporation,
39 and William B. Preston, Robert T. Burton, and John R. Winder, Francis Armstrong, Jesse W. Fox, jr., and Theodore McKean, defendants.

That in said record among other things was a written statement, agreed upon by the counsel for the respective parties as a true statement of facts in regard to the history, ownership, and occupancy of the premises and property above named, to wit: The premises known as the Historian's Office and grounds, and the property known as the Gardo House and grounds, which said statement of facts was introduced in evidence, and recites the following facts, to wit: "The east half of the lot 6, block 75, Plat A, Salt Lake City Survey * * * known as the Gardo House and lot * * * was owned by Brigham Young, individually, at the time of his death, 1877, and his executors transferred and conveyed said premises to John Taylor as trustee in trust for the corporation of the Church of Jesus Christ of Latter-day Saints for a valuable consideration, pursuant to the power in them vested by the will of said Brigham Young; subsequently, on the 14th day of April, 1878, said John Taylor, as such trustee in trust, transferred and conveyed said property and premises to Theodore McKean on a secret trust for said corporation, who held the same upon said trust until July, 1887, when he attempted to convey the same to William B. Preston, Robert T. Burton, and John R. Winder, by a certain instrument in writing, a copy of which is hereto attached, marked Exhibit B. Said premises were used and occupied by John Taylor, president of said church, from 1878 up to the time of his death as his residence; the said John Taylor occupied said premises as the head of said church; he died in the month of July, to wit, the 25th day of July, 1887.

Also in said statement of facts is found the following:
40 "A part of lot 6 in block 75, Plat A, Salt Lake City survey, described as follows: Commencing at a point 10 rods west of the northeast corner of said lot, and running thence south 10 rods; thence west 7 rods; thence north 10 rods; thence east 7 rods to the place of beginning, known as the Historian's Office and grounds, worth twenty thousand dollars, * * * was taken possession of by Albert P. Rockwood about 1848, and was a part of public domain, and continued to be such to the time when the town site of Salt Lake City was entered as aforesaid, to wit: November 21st, 1872, and the church of Jesus Christ of Latter-day Saints, by its agents, purchased said Rockwood's claim to the above-described premises, and at its own cost and expense erected thereon a building, which has ever since been known as the Historian's Office, and such building was large enough to contain the said historian's family and for furnishing an office for him; and from the year 1848 until the time of his death in 1875, the said George A. Smith was the historian of said church and lived in said building with his family, and had the custody of the books, papers, and records of said church relating to the history of the

public acts of its officers and members, and the same have ever been kept in said building from the time of its construction until the present time, at the cost of said church, and such office is and has been necessary for the use of such historian in the discharge of his duties; and in 1872 the said George A. Smith obtained the title to said premises from the mayor of Salt Lake City under the town-site law, and after his death the same was conveyed to his wife and one of his granddaughters, who afterwards transferred the same to Theodore McKean for a valuable consideration, and the latter ever since and now holds the same on a secret trust for
41 the use and benefit of said corporation; said tract of land lies immediately west and adjoining the Gardo Houses premises."

It was established by the evidence, and particularly by the statement of facts hereinbefore referred to, that on June 1st, 1872, the legal title to an entire block of land in the city of Salt Lake, designated as block 87, in Plat A, and commonly known as the Temple block, containing ten acres of land, was conveyed by the mayor of Salt Lake City to the trustees in trust of the corporation known as the Church of Jesus Chrost of Latter-day Saints, for the sole use and benefit of said church and corporation, who retained the title thereto until the act of Congress of March 3rd, 1887, took effect; that said premises on the 2nd day of March 1867, and ever since, were and have been of value largely exceeding fifty thousand dollars, and that during all of said last-mentioned period the said church corporation was the real owner of and in the actual possession of all of said tract of land.

It also was established by the evidence that certain other real property situate in block 88, Plat A, Salt Lake City, known as 'he tithing office property, and worth fifty thousand dollars, was possessed by said church corporation since 1848, and ever since had been used and occupied by said church, first as an unincorporated society and then as a corporation; that on the 21st day of November, 1871, said property was entered, with other lands, under the town-site law of the United States, and that afterwards it was conveyed by the mayor of Salt Lake City to Brigham Young, the president and trustee in trust of said corporation.

It was also established by the evidence that all of the property
42 in defendant's statement and in these amendments described was owned by the late corporation, the Church of Jesus Christ of Latter-day Saints, on the 3rd day of March, 1887, the date of the dissolution of said late corporation, and that none of it, except the said Temple block, had ever been used as buildings or grounds appurtenant thereto for the purpose of the worship of God, or of parsonages connected therewith, or for burial grounds by the said late corporation, and that no part of it was necessary for such purposes for the unincorporated religious sect now known as the Church of Jesus Christ of Latter-day Saints.

And it was also made to appear by the evidence that, on the 8th day of October, A. D. 1888, the supreme court of the Territory of Utah, in a cause then pending before it, to which all parties to this action were parties, and of which cause and the parties thereto the said court then and there had jurisdiction, found, adjudged, and decreed as hereinbefore last above stated concerning the property at issue in this action.

It was also made to appear by the evidence that, at the time of the acquiring by the said late corporation of the parcels of property in these proceedings mentioned, except said Temple block, it, the said late corpora-

tion, had already acquired and owned and held real property worth more than fifty thousand dollars.

I certify the foregoing to be settled statement by the court and allowed.

C. S. ZANE, *Judge.*

Filed Jan'y 30th, 1892.

HENRY G. MCMILLAN, *Clerk,*
By GEO. D. LOOMIS, *Dep'ty.*

43 SPECIFICATION OF PARTICULARS IN WHICH THE EVIDENCE IS INSUFFICENT TO SUSTAIN THE FINDINGS AND DECISION OF THE COURT.

First. The court is unsustained by the evidence in stating, in paragraph 7 of said findings, "that neither the said east ½ of said lot 6," being the "Gardo House and grounds, nor the portion of the west half of said lot 6, designated as the Historian's Office and grounds, has ever been used, or the buildings or grounds appurtenant thereto, for the purposes of the worship of God or of parsonages connected therewith." And the following statement found in the latter part of said paragraph: "Nor is the said real estate, or any part thereof, necessary for such purposes for the unincorporated religious sect known as the Church of Jesus Christ of Latter-day Saints."

Second. That the court is unsustained by the evidence in that portion of the 8th finding of fact reading as follows: "That none of it," the said property known as the Gardo House and Historian's Office, "had ever been used as buildings or grounds appurtenant thereto for the purpose of the worship of God, or of parsonages connected therewith * * * for the said corporation of the Church of Jesus Christ of Latter-day Saints, and that no part of it was necessary for such purposes of the unincorporated religious sect known as the Church of Jesus Christ of Latter-day Saints," as it is shown by said record or statement, and evidence in said case that said church used said buildings, known as the Gardo House and the Historian's Office, connected therewith as a residence of its president, for the period of more than ten years, and that it has no other place for a parsonage or residence for the head of its said church.

Assignment of errors.

First. The court erred in its said findings of fact in which it
44 stated "that neither the east ½ of said lot 6, being the Gardo House and grounds, nor that portion of said lot 6 designated as the Historian's Office and grounds, has ever been used as buildings or grounds appurtenant thereto for the purpose of the worship of God, or of parsonages connected therewith."

Second. The court erred in that portion of its finding 7 of fact that states "that said real estate or no part of it is necessary for such purpose for the unincorporated religious sect of Church of Jesus Christ of Latter-day Saints."

Third. The court erred in that portion of the 8th finding of fact wherein it stated "that none of it" (referring to said properties) "has ever been used for buildings or grounds appurtenant thereto for the purposes of the worship of God, or as parsonages connected therewith."

Fourth. The court erred by stating in said paragraph that "no part of it was ever necessary for such purposes by said religious sect known as the Church of Jesus Christ of Latter-day Saints."

Fifth. The court erred in its conclusions of law when it stated that the said property was forfeitable or escheatable, and when it stated that said property was held in violation of the act of Congress approved July 1st, 1862, and also in that conclusion of law where it stated that no part of said property was occupied exclusively for the purpose of the worship of God, or as parsonages connected therewith, and that the same was subject to be forfeited or escheated to the United States.

And the court erred in refusing to hold that said plaintiff was barred by virtue of section 1047 of the Revised Statutes of the United States, when it affirmatively appeared that said suit was not brought till more than five years after said cause of action accrued.

F. S. RICHARDS,
LE GRAND YOUNG,
DICKSON & STONE,
Attorneys for Defendants.

I hereby certify the foregoing to be the settled statement by the court and allowed.

C. S. ZANE, *Judge.*

45 Time extended till January 30th, 1892, to file and serve notice, motion, and statement on motion for new trial.

(Endorsed:) Notice, motion, and statement on motion for new trial. Served Jan. 30, 1892. Henry G. McMillan, clerk.

46 IN THE DISTRICT COURT IN AND FOR THE THIRD JUDICIAL DISTRICT, UTAH TERRITORY.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
CERTAIN REAL ESTATE SITUATED IN SALT Lake City and county of Salt Lake, Territory of Utah, particularly described as all of the east half of lot 6, block 75, Plat A, Salt Lake City survey, to wit: Commencing at the NE. corner of said lot, and running thence south 10 rods; thence west 10 rods; thence north 10 rods; thence east 10 rods to the place of beginning, commonly known as the Gardo House and grounds. Also that part of the west ½ of lot 6, block 75, Plat A, Salt Lake survey, to wit: Commencing at a point 10 rods west of the NE. corner of said lot, and running thence south 10 rods; thence west 7 rods; thence north 10 rods; thence east 7 rods to the place of beginning, known as the Historian's Office and grounds, and William B. Preston, Robert T. Burton, and John R. Winder, trustees, defendants.

Order overruling motion for new trial.

This cause coming regularly on to be heard on the 21st day of May, 1892, on the defendant's and intervenor's statement and motion for a new

trial as allowed and settled by court, defendants and intervenors appearing by F. S. Richards, LeGrand Young, and Dickson & Stone, and said plaintiff appearing by the district attorney of Utah Territory, C. S. Varian, esq., the motion for a new trial being based upon the
47 alleged errors made by the court in its findings of fact and conclusions of law upon the evidence adduced in the case at bar.

In said statement on motion for a new trial a portion of the evidence in the case is quoted, which is substantially as follows, to wit: That the east half of lot 6, block 75, Plat A, Salt Lake City survey, known as the Gardo House lot, was owned by Brigham Young individually, at the time of his death, 1877, and the executors of his will transferred and conveyed the same to John Taylor, as trustee in trust for that corporation of the Church of Jesus Christ of Latter-day Saints for a valuable consideration. That said premises were used and occupied by said John Taylor, president of said church, from 1878 up to the time of his death, which took place July, 1887.

So far as the evidence discloses the facts the said church had no other place for a residence of its president, and the premises in question were occupied by said John Taylor by virtue of his position.

It also appears by the evidence that part of lot 6, block 75, Plat A, Salt Lake City survey, being seven rods north front by ten rods deep, and adjoining on the west and next to the Gardo House lot, being known as the Historian's Office of said church, was at all times during said period occupied by the historian of said church as his office, in which was kept the books, papers, histories, and writings of the church, and it is claimed by said defendant church to have been a part and portion of the residence of its president.

It is claimed by the defendants moving for a new trial that this evidence sufficiently establishes the fact that the property described
48 as the east ½ of lot 6, block 75, Plat A, Salt Lake City survey, and known as the Gardo House, including that portion of said lot known as the Historian's Office property, is a parsonage, and therefore exempt from escheat and forfeiture under the 17th section of the act of Congress entitled "An act to amend an act entitled 'An act to amend section 5352 of the Revised Statutes of the United States in reference to bigamy, and for other purposes,'" approved March 3rd, 1887.

It further appears by the evidence, and which is a point made by the plaintiff in the case, that this question as to whether or not this property was a parsonage within the meaning of the act of Congress above referred to was passed upon by the supreme court of the Territory of Utah in a certain case instituted in the court in October, 1887, entitled United States of America, plaintiff, vs. The Late Corporation of the Church of Jesus Christ of Latter-day Saints, and John Taylor, late trustee in trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, late assistant trustees in trust of said corporation, defendants, in which it was held that said premises and property was not a parsonage, and which decision of the supreme court of the Territory of Utah was afterwards affirmed in the Supreme Court of the United States, the record of which case and the decision thereon were adduced in evidence by the plaintiff.

In the assignment of errors of the defendants in their motion for a new trial they make the following points:

First. The court erred in its findings of fact, in which it stated that neither the east ½ of said lot 6, block 75, Plat A, Salt Lake City
49 survey, being the Gardo House and grounds, nor that portion of said lot designated as the Historian's Office and grounds, has ever been used as buildings or grounds appurtenant thereto for the purposes of the worship of God or of parsonages connected therewith.

Second. The court erred in that portion of its findings of fact that states the said real estate or no part of it is necessary for such purposes for the unincorporated religious sect of the Church of Jesus Christ of Latter-day Saints.

Third. The court erred in that portion of the 8th findings of fact wherein it stated that none of it (referring to said properties) has been used for buildings or grounds appurtenant thereto for the purpose of the worship of God or of parsonages connected therewith.

Fourth. The court erred by stating in said paragraph that no part of it was ever necessary for such purpose for said religious sect, known as the Church of Jesus Christ of Latter-day Saints.

And the court erred in refusing to hold that said plaintiff, barred by virtue of section of the Revised Statutes of the United States when it affirmatively appeared that said suit was not brought till more than five years after said cause of action accrued.

Fifth. The court erred in its conclusions of law when it stated that said property was forfeitable or escheatable, or when it stated that said property was held in violation of the act of Congress approved July 1st, 1862, and also in that conclusion of law which stated that part of said property was occupied exclusively for the worship of God or as parsonages connected therewith and that the same was subject to be forefeited or escheated to the United States.

50 After carefully looking into the alleged errors and the evidence set forth the court is of the opinion that the evidence estblishes the fact that the Gardo House property above described, being the east ½ of lot 6, block 75, Salt Lake City survey, at the time of the approval of the law under which these suits were brought, namely, March 3rd, 1887, was and for ten years prior to had been the property of the Church of Jesus Christ of Latter-day Saints, and was occupied and held by its president as a residence or parsonage, and was therefore exempt from forfeiture or escheat under the 17th section of the act last above referred to; but the court feels bound to say that it is not an open question, as the same has been passed upon and adjudicated by the supreme court of the Territory of Utah in the case above cited, and affirmed by the Supreme Court of the United States, and in that case it was held that the property in question was not a parsonage and therefore not exempt from forfeiture or escheat. Being bound by this decision the court feels compelled to overrule the motion for a new trial, which is accordingly done. Motion denied.

C. S. ZANE, *Judge.*

Dated June 4th, 1892.

Attest:

HENRY G. MCMILLAN, *Clerk,*
By GEORGE D. LOOMIS, *Deputy.*

(Endorsed:) Filed June 4, 1892. Henry G. McMillan, clerk, by Geo. D. Loomis, dept.

51 IN THE DISTRICT COURT IN AND FOR THE THIRD JUDICIAL DISTRICT, UTAH TERRITORY.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
CERTAIN REAL ESTATE SITUATED IN THE CITY and county of Salt Lake, Territory of Utah, particularly described as all of the east ½ of lot 6, block 75, Plat A, Salt Lake City survey, to wit: Commencing at the NE. corner of said lot, thence south 10 rods; thence west 10 rods; thence north 10 rods; thence east 10 rods to t'e place of beginning, commonly known as the Gardo House and grounds. Also that part of the west ½ of lot 6, block 75, Plat A, Salt Lake City survey, to wit: Commencing at a point 10 rods west of the NE. corner of said lot 6, and running thence south 10 rods; thence west 7 rods; thence north 10 rods; thence east 7 rods to the plave of beginning, known as the Historian's Office and grounds, and William B. Preston, Robert T. Burton, and John R. Winder, trustees, defendants.

Undertaking on appeal.

The said defendants and intervenors in the above-entitled action are about to appeal to the supreme court of the Territory of Utah, from the order and judgment entered against the said defendants in said action in the district court of the third judicial district in favor of the said plaintiffs in said action, on the 4th day of June, 1892, overruling the motion for defendants for a new trial.

Now, therefore, in consideration of the premises and of such appeal, we, the undersigned, of Salt Lake City, county of Salt Lake and Territory of Utah, do hereby jointly and severally undertake and promise, on the part of the appellant, that the said appellant will pay all damages and
52 costs which may be ruled against them on said appeal, or on the dismissal thereof, not exceeding three hundred dollars, for which amount we acknowledge ourselves jointly and severally bound.

DAVID N. KENZIE.
W. B. DOUGALL.

Dated this 21st day of July, A. D. 1892.

53 TERRITORY OF UTAH,
County of Salt Lake, ss:

We, David McKenzie and W. B. Dougall, being first duly sworn on our several oaths to say: That we are residents and freeholders in the county of Salt Lake and Territory of Utah; that we are the same persons who executed the foregoing undertaking on appeal.

We further say on our several oaths that we are each worth the sum in said bond named as penalty, to wit, three hundred dollars, free and above all our debts and liabilities and property exempt from execution.

DAVID MCKENZIE.
M. B. DOUGALL.

Subscribed a*b*d sworn to before me this 21st day of July, 1892.
[SEAL.] JAMES JACK,
Notary Public.

My commission expires August 8th, 1893.

54 IN THE DISTRICT COURT IN AND FOR THE THIRD JUDICIAL DISTRICT, UTAH TERRITORY.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
CERTAIN REAL ESTATE IN THE CITY AND county of Salt Lake, Territory of Utah, particularly described as all of the east ½ of lot 6, block 75, Plat A, Sal' Lake survey, to wit: Commencing at the NE. corner of said Lo*r*, thence south 10 rods; thence west 10 rods; thence north 10 rods; thence east 10 rods to the place of beginning, commonly known as the Gardo house and grounds. Also that part of the west ½ o*d* lot 6, block 75, Plat A, Salt Lake City survey, to wit: Commencing at a point 10 rods west of the NE. corner of said lot 6, and running thence sou'h 10 rods; thence west 7 rods; thence north 10 rods; thence east 7 rods to the place of beginning, known as the Historian's Office and grounds, and William B. Preston, Robert T. Burton, and John R. Winder, trustees, defendants.

Notice of appeal.

To the said plaintiff and its attorneys, W. H. H. Miller, C. S. Varian, and Jos. L. Rawlins.

Please take notice that the defendants and intervenors in the above-entitled action hereby appeal to the supreme court of this Territory from the judgment and order entered in this case on June 4th, 1892, in favor of plaintiff and against defendants, ov*e*rruling said defendant's motion for a new trial, and from the whole thereof, dated this 23rd day of July, 1892.

F. S. RICHARDS.
LEGRAND YOUNG.
W. H. DICKSON.

55 To the clerk of the district court of the third judicial district, for said Territory, and to said attorneys for said plaintiff.
July 23rd, 1892.

56 IN THE DISTRICT COURT IN AND FOR THE THIRD JUDICIAL DISTRICT, UTAH TERRITORY.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs
CERTAIN REAL ESTATE situated in the city and county of Salt Lake, Territory of Utah, paticularly described as all of the east ½ of lot 6, block 75, Plat A, Salt Lake City survey, to wit: Commencing at the NE. corner of said lot 6, thence south 10 rods; thence west 10 rods; thence north 10 rods; thence east 10 rods to the place of beginning, commonly known as the Guardo House and grounds. Also that part of the west ½ of lot 6, block 75, Plat A, Salt Lake City su'vey to wit: Commencing at a point 10 rods west of the NE. corner of said lot 6, and running thence south 10 rods; thence west 7 rods; thence no'th 10 rods; thence east 7 rods to the place of beginning, commonly known as the Historian's Office and grounds, and William B. Preston, Robert T. Burton, and John R. Winder, trustees, defendants.

I, Henry G. McMillam, clerk of the district court of the third judicial district, Utah Territory, hereby certify that the foregoing copies in the above entitled cause, to wit: The complaint of said plaintiff; the summons in said case; the answer of said defendants; the petition in intervention of James P. Freeze et al; the answer of plaintiff to said intervention; the order; the findings of fact and conclusions of law and judgment and decree of the district court of the third judicial district in said case; the statement on motion for a new trial; and the order overruling the said motion and notice of appeal are true and correct copies of the originals now on file in my office.

And I further certify that the said defendants and intervenors have filed and undertaking on appeal in due form.

57 Witness my hand and the seal of this court this 25th day of September, A. D. 1892.

HENRY G. MCMILLAM,
Clerk,
By GEORGE D. LOOMIS,
Deputy.

58 IN THE SUPREME COURT OF UTAH TERRITORY.

Regular June term, 1893. Thursday, June 15th.

UNITED STATES OF AMERICA
vs.
CERTAIN REAL ESTATE * * * KNOWN AS the Gardo House and grounds, etc., and William B. Preston et al., defendants, and James P. Freeze et al., intervenors, appellants. — Appeal from 3rd district.

This cause coming on regularly for hearing, was argued by Messrs. Le Grand Young, W. H. Dickson, and Franklin S. Richards in behalf of

appellants, and by John A. Marshall, esq., and Hon. John W. Judd, United States attorney, in reply, was submitted and taken under advisement.

59 IN THE SUPREME COURT OF UTAH TERRITORY.

Regular June term, 1893. Thursday, Aug. 31st.

THE UNITED STATES OF AMERICA
vs.
CERTAIN REAL ESTATE * * * KNOWN AS the Gardo House and grounds and William B. Preston et al., defendants, and James P. Freeze et al., intervenors, appellants.
} Appeal from 3rd district.

This cause having been heretofore argued and submitted and the court being sufficiently advised thereon, it is now here considered, ordered, and adjudged, that the judgment of the district court therein, so far as it relates to the property described, as all of the east one-half (E. ½) of lot six (6), in block seventy-five (75), Plat A, of Salt Lake City survey, known as the Gardo House and grounds is affirmed; and it is further ordered that so far as said judgment of said district court relates to the property particularly described as being a part of lot six (6), block seventy-five (75), Plat A, of Salt Lake City survey, commencing at a point ten (10) rods west of the northeast corner of said lot 6; thence south ten (10) rods; thence west seven (7) rods; thence north ten (10) rods, and
60 thence east seven (7) rods to the place of beginning, known as the Historian's Office and grounds, the same be and is hereby reversed, and this cause is remanded to said district court, with directions to dismiss the action against said last described piece of property.

Thereupon counsel for the United States, respondent herein, prayed the allowance of an appeal to the Supreme Court of the United States from the judgment of this court this day rendered herein, reversing the judgment of the district court, and it was ordered that such appeal as prayed for be and is hereby allowed.

61 IN THE SUPREME COURT OF UTAH.

THE UNITED STATES, PLAINTIFF,
vs.
GARDO HOUSE AND HISTORIAN OFFICE et al., defendants and applts.

SMITH, J.:

This proceeding is in its general features like the case of The United States against The Tithing Yard et al., just decided, and is governed by the decision in that case except for the difference in the state of facts.

The property called the Gardo House, being the east ½ of lot 6, in block 75, Plat A, of Salt Lake City survey, as shown by the findings of fact, was not acquired by the church until 1877, and the church had no interest in it on July 1st, 1862, hence under the conclusion reached in the Tithing Yard case, the property just described as the Gardo House is subject to forfeiture and the decree escheating it to the plaintiff should be affirmed.

As to the property described in the complaint and findings as a part of the west ½ of lot 6, block 75, Plat A, in Salt Lake City, commencing at a point 10 rods west of the northeast corner of said lot 6, thence south 10

rods; thence west 7 rods; thence north 10 rods; thence east 7 rods to the place of beginning and called the Historian Office and grounds, it appears that the property was acquired by the church in 1855, and was the substantially improved, and that the church was, on July 1st, 1862, and ever since has been, in the actual possession of this property.

We hold that the church had a vested interest in this property
62 at the time of the passage of the act of 1862, and that it was reserved to the church and not rendered subject to escheat by the provisions of that act as indicated in our opinion in the Tithing Yard case.

We deem it proper to add in this opinion the following, which was omitted from the opinion in the principal case. It was suggested, rather than urged on the argument, that the right of the Government to a forfeiture in all of these cases was already adjudicated in favor of the Government by the decision of the Supreme Court of the United States in the case of U. S. vs. Church, 136 U. S., 1.

We can not agree to this view; that was an action commenced in this court under special powers conferred on this court by the act of March 3rd, 1887.

It is not to be contended that this court had any jurisdiction in the premises, except that conferred by the act. An examination of the act and the provisions of sections 17 and 26 will show that the jurisdiction of this court was limited to two sub'jects.

1st. To appoint a receiver for the property of the church corporation until it could be disposed of, and finally to dispose of it for lawful purposes of like nature with those for which it had been given to the church.

2nd. To set apart and place in the hands of the trustees the real estate of the church used for places of worship, parsonages, and burial grounds.

This, we think, was the full extent of the jurisdiction of this court in that case, and this seems to have been the view of both this court and the Supreme Court of the United States in deciding that case.

This being the case, of course the right of the Government to escheat*n* the property proceeded against in these actions was not and could not have been involved.

63 This view is fully supported by the opinion of the Supreme Court of the United States in the case referred to. In the opinion, 136 U. S., 64, the court says: This suit is in some respects an auxiliary one, instituted for the purpose of taking possession of, and holding for final disposition, the property of the defunct corporation in the hands of a receiver, and winding up its affairs. To that extent, and to that extent only, the decree of the circuit court has gone.

In the proceedings which have been instituted in the district court of the Territory, it will be determined whether the real estate of the corporation which has been seized (excepting portions exempted by the act) is or is not to be escheated or become forfeited to the United States. (See 136 U. S., 61.)

From the above citation it will be seen that the Supreme Court expressly hold that the matter of whether the property in controversy here is subject to escheat and forfeiture is still open for adjudication.

This action is instituted by express authority of section 13 of the act of March 3rd, 1887. It is and was intended to be a proceeding wholly inde-

pendent of the action in the Supreme Court provided for in sections 17 and 26 of that act.

It results, from the conclusions announced, that the decree in this case should be affirmed so far as it declares a forfeiture of the Grado House property, and in so far as it declares a forfeiture of the Historian Office property, it should be reversed and remanded to the district court with directions to dismiss the action.

We concur.

MINOR,
BARTCH, *J.*

(Endorsed:) Title, court and cause. Opinion. Filed Aug. 31st, 1893. Jos. P. Bache, clerk.

64 By the honorable Charles S. Zane, chief justice of Utah. To certain real estate situate in the city and county of Salt Lake, Territory of Utah, particularly described as follows: All of the east half of lot 6, block 75, plat A, Salt Lake City survey, to wit: Commencing at the northeast corner of said lot and running thence south 10 rods; thence west 10 rods; thence north 10 rods, and thence east 10 rods to the place of beginning, known as the Gardo House and grounds; also a part of the west half of lot 6, block 75, plat A, Salt Lake City survey, Salt Lake County, Utah, to wit: Commencing at a point 10 rods west of the northeast corner of said lot 6, and running thence south 10 rods; thence west 7 rods; thence north 10 rods, and thence east 7 rods to the place of beginning, known as the Historian's Office and grounds, and William B. Preston, Robert T. Burton, and John R. Winder, trustees; James P. Freeze and Spencer Clawson, intervenors, and to Franklin S. Richards, Le Grand Young, and W. H. Dickson, esqrs., their attorneys. Greeting:

Whereas the United States of America has lately appealed to the Supreme Court of the United States from a judgment and decree rendered in the supreme court of Utah Territory in favor of you, the said land, and William B. Preston, Robert T. Burton, and John R. Winder, trustees, and James P. Freeze and Spencer Clawson, intervenors:

You are therefore hereby cited and admonished to be and appear before the Supreme Court of the United States, to be holden at the city of Washington, D. C., within sixty (60) days from date of this citation, to do and receive what may pertain to justice to be done in the premises.

Given under my hand at the city of Salt Lake, in the Territory of Utah, this 3rd day of Oct., A. D. 1893.

C. S. ZANE,
Chief Justice of Utah

Attest:
JOSEPH P. BACHE,
Clerk Supreme Court of Utah.

Due service of a copy of the above citation admitted this 4th day of October, A. D. 1893.

LE GRAND YOUNG,
F. S. RICHARDS,
W. H. DICKSON,
Attorneys for Respondents.

65 TERRITORY OF UTAH,
County of Salt Lake, ss:

Boman Cannon, being duly sworn before me, says that he is a deputy United States marshal in and for the Territory of Utah; that on the 4th day of October, A. D. 1893, between the hours of 10 a. m. and 5 p. m. of said day, he served the within citation upon Le Grand Young, esq., at his office in Salt Lake City, Utah, by leaving a copy of same with said Young, and secured his signature to the within original citation.

BOMAN CANNON.

Sworn and subscribed to before me this 4th day of October, A. D. 1893.

JOSEPH P. BACHE,
Clerk Supreme Court of Utah.

(Indorsed:) In the supreme court of Utah. The United States of America vs. certain real estate * * * known as the Gardo House, etc., etc., et al., appellants. Citation. Original. Filed in the supreme court, Oct. 4, 1893, at Salt Lake City, Utah. Jos. P. Bache, clerk.

67 IN THE SUPREME COURT OF THE UNITED STATES.

THE UNITED STATES OF AMERICA, APPELLANT,
vs.
CERTAIN REAL ESTATE SITUATE IN THE CITY and county of Salt Lake, Territory of Utah, particularly described as follows: All of the east half of lot 6, block 75, Plat A, Salt Lake City survey, to wit: Commencing at the northeast corner of said lot, and running thence south 10 rods; thence west 10 rods; thence north 10 rods, and thence east 10 rods to the place of beginning, known as the Gardo House and grounds. Also a part of the west half of lot 6, block 75, Plat A, Salt Lake City survey, Salt Lake County, Utah, to wit: Commencing at a point 10 rods west of the northeast corner of said lot 6, and running thence south 10 rods; thence west 7 rods; thence north 10 rods, and thence east 7 rods to the place of beginning, known as the Historian's Office and grounds; and William B. Preston, Robert T. Burton, and John R. Winder, trustees, defendants and respondents, and James P. Freeze and Spencer Clawson, intervenors and respondents.

Now comes the United States of America, by its attorneys, and says: That in the record and proceedings in the above-entitled matter there is manifest error in this, to wit: That the supreme court of Utah Territory erred in rendering its judgment and decree herein and in directing the said complaint to be dismissed as to all those certain premises described therein and known as the Historian's Office and grounds. The said decree was based on the alleged reason that the late corporation, the Church of Jesus Christ of Latter-day Saints, had a vested right to the premises affected prior to July 1st, 1862; whereas it was admitted by the pleadings in said

action, being alleged in the complaint and being also alleged in the answer of defendants and in the petition for intervention, that the said
68 late corporation acquired the said property in 1883; and whereas the appeal to the supreme court of Utah Territory was on the judgment roll alone, and it appears by the findings of fact in said action that George A. Smith obtained the title to said premises in 1872, and that thereafter, for a valuable consideration, his heirs conveyed the same to Theodore McKean in trust for the late corporation, the Church of Jesus Christ of Latter-day Saints.

2. The supreme court of Utah Territory erred in its said judgment or decree directing the complaint to be dismissed as to the said property known as the Historian's Office and grounds, because the appeal to the said court was on the judgment roll alone, and the judgment rendered by it is not supported by any findings of fact or by the pleadings in said action.

Wherefore the said United States of America prays that the said judgment of the supreme court of Utah Territory be reversed and that the said court be directed to affirm the judgment of the district court of the third judicial district of Utah Territory.

JOHN A. MARSHALL,
Attorney for Appellant.

69 (Indorsed:) In the Supreme Court United States. The United States of America, app'l't, vs. Certain real estate, etc., and Wm. B. Preston et al., trustees, defendants. James P. Freeze et al., intervenors, respondents. Assignment of errors and prayer for reversal. Filed Sept. 14th, 1893. Joseph P. Bache, clerk supreme court of Utah Territory.

70 UNITED STATES OF AMERICA,
Territory of Utah, ss:

I, Joseph P. Bache, clerk of the supreme court of Utah, in pursuance of an appeal allowed in the case of The United States of America, respondent, vs. Certain real estate * * * known as the Gardo House and grounds, etc., and William B. Preston et al., defendants, and James P. Freeze et al., intervenors, appellants, lately pending in said court, do return attached hereto a transcript of the record and proceedings, opinion, assignment of errors, supersedeas bond, and bond for costs, together with the original citation, all in and of said court in said cause to the Supreme Court of the United States, and I hereby certify that said attached transcript of said record and proceedings, opinion, assignment of errors is a full, true, and complete copy of the several originals thereof on file or of record in my office.

In witness whereof I hereunto set my hand and affix the seal of the supreme court of Utah Territory this 9th day of October, A. D. 1893, at Salt Lake City, Utah.

[SEAL.]

JOSEPH P. BACHE,
Clerk Supreme Court of Utah.

(Indorsed on cover:) Case No. 15458. Term No. 606. The United States, appellant, vs. Certain real estate known as the Gardo House & grounds, &c., William B. Preston et al. Utah Territory supreme court. Filed December 4, 1893. Supreme Court U. S. Clerk's office. Received Dec. 4, 1893.

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action, being alleged in the complaint and being also alleged in the answer of defendants and in the petition for intervention, that the said
68 late corporation acquired the said property in 1883; and whereas the appeal to the supreme court of Utah Territory was on the judgment roll alone, and it appears by the findings of fact in said action that George A. Smith obtained the title to said premises in 1872, and that thereafter, for a valuable consideration, his heirs conveyed the same to Theodore McKean in trust for the late corporation, the Church of Jesus Christ of Latter-day Saints.

2. The supreme court of Utah Territory erred in its said judgment or decree directing the complaint to be dismissed as to the said property known as the Historian's Office and grounds, because the appeal to the said court was on the judgment roll alone, and the judgment rendered by it is not supported by any findings of fact or by the pleadings in said action.

Wherefore the said United States of America prays that the said judgment of the supreme court of Utah Territory be reversed and that the said court be directed to affirm the judgment of the district court of the third judicial district of Utah Territory.

JOHN A. MARSHALL,
Attorney for Appellant.

69 (Indorsed:) In the Supreme Court United States. The United States of America, app'l't, vs. Certain real estate, etc., and Wm. B. Preston et al., trustees, defendants. James P. Freeze et al., intervenors, respondents. Assignment of errors and prayer for reversal. Filed Sept. 14th, 1893. Joseph P. Bache, clerk supreme court of Utah Territory.

70 UNITED STATES OF AMERICA,
Territory of Utah, ss:

I, Joseph P. Bache, clerk of the supreme court of Utah, in pursuance of an appeal allowed in the case of The United States of America, respondent, vs. Certain real estate * * * known as the Gardo House and grounds, etc., and William B. Preston et al., defendants, and James P. Freeze et al., intervenors, appellants, lately pending in said court, do return attached hereto a transcript of the record and proceedings, opinion, assignment of errors, supersedeas bond, and bond for costs, together with the original citation, all in and of said court in said cause to the Supreme Court of the United States, and I hereby certify that said attached transcript of said record and proceedings, opinion, assignment of errors is a full, true, and complete copy of the several originals thereof on file or of record in my office.

In witness whereof I hereunto set my hand and affix the seal of the supreme court of Utah Territory this 9th day of October, A. D. 1893, at Salt Lake City, Utah.

[SEAL.]

JOSEPH P. BACHE,
Clerk Supreme Court of Utah.

(Indorsed on cover:) Case No. 15458. Term No. 606. The United States, appellant, vs. Certain real estate known as the Gardo House & grounds, &c., William B. Preston et al. Utah Territory supreme court. Filed December 4, 1893. Supreme Court U. S. Clerk's office. Received Dec. 4, 1893.

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